

July 21, 2005
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 8 of 15

-- REMARKS --

The Applicants thank the Examiner for the courtesies shown during the telephonic interview on July 19, 2005. The present amendment replies to a Non-Final Office Action dated April 21, 2005. Claims 1, 2, 4-12, and 14-20 are currently pending in the present application. Claim 4 has been amended. The amendment to the claims has not been made to avoid any reference, and instead, the claim has been amended to correct an inadvertent typographical error. No new matter has been added with the amendment.

In the Non-Final Office Action, Examiner Chea rejected pending claims 1, 2, 4-12, and 14-20 on various grounds. The Applicants respond to each ground of rejection as subsequently recited herein, and respectfully request reconsideration and further examination of the present application under 37 CFR § 1.112:

- A. Claims 4-5 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention

Claims 4-5 were rejected by Examiner Chea under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. Claim 4 has been amended to provide proper antecedent basis for the claim limitation "a map". Claim 5 depends from the amended claim. Withdrawal of the rejection of claims 4-5 under 35 U.S.C. § 112, second paragraph is respectfully requested.

July 21, 2005

Case No.: AUS920000805US1 (9000/14)

Serial No.: 09/738,371

Filed: December 15, 2000

Page 9 of 15

- B. Claims 1, 2, 4-12 and 15-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Anerousis (U.S. Patent No. 6,760,775) in view of Liron (U.S. Patent No. 5,598,532)

Claims 1, 2, 4-12 and 15-19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,760,775 to Anerousis ("the Anerousis Patent") in view of U.S. Patent No. 5,598,532 to Liron ("the Liron Patent"). This rejection is traversed. The Applicants have thoroughly considered Examiner Chea's remarks concerning the patentability of independent claims 1, 9, 15 and 16 over the Anerousis Patent in view of the Liron Patent. The Applicants have also thoroughly read the Anerousis and Liron Patents.

As the Examiner is well aware, in order to make a *prima facie* case of obviousness under § 103(a), all of the *claimed* elements of the invention must be taught or suggested by the prior art (MPEP § 2143.03). Because the reference does not disclose each and every element, this rejection must fall.

The Anerousis Patent does not teach or suggest, at least, a method or system for allocating a service on a network as claimed and described in the specification of the present application. The Examiner references column 8 line 62 to col. 9 line 4 as teaching allocating the service to one of the complying node clusters as recited in independent claims 1, 9, 15 and 16. The reference citation is reproduced below for convenience.

As illustrated in FIG. 3, connection requests for network services provided by a virtual host may be received in original data flow A. In one example of the operation of the
63 second exemplary embodiment of the invention, the network service requests are identified at the borders of the AS 300. The system-specific SLR cluster 310 at the input/output

July 21, 2005

Case No.: AUS920000805US1 (9000/14)

Serial No.: 09/738,371

Filed: December 15, 2000

Page 10 of 15

9

gateway of the AS 300 provides entry to a tunnel B across the AS 300 to a site-specific SLR cluster 320. The site-specific SLR cluster 320 provides entry to a tunnel C to a host server 370 at the physical host site 330. The site-specific SLR cluster 320 also terminates the tunnel B across the AS 300 to extract the enclosed datagrams. The host server 370 terminates the tunnel C and recovers the original datagram exactly as it was sent from the client or client' customer terminal 340. 5

However, this citation merely discloses the flow of connection or service requests within a network. Nowhere in the Anerousis Patent does it teach or suggest the allocation of service to one of the complying node clusters as claimed by the Applicants in independent claims 1, 9, 15 and 16. The Anerousis Patent merely teaches a method and system for enabling a network and components of that network to be aware of services that already exist on that network (see Abstract) (emphasis added). In fact, the Anerousis Patent does not address the problem solved by the Applicants' invention and shos a complete absence of the recognition of the problem of how best to allocate services among a network. Furthermore, the Anerousis Patent teaches away from the invention as claimed by requiring that the service be present on the servers to which the service requests are routed. Thus, the Anerousis Patent does not teach all of the limitations claimed by the Applicants. The Liron Patent also fails to teach or disclose at least, the same claim limitations, as correctly found by the Examiner. Further, the Anerousis Patent in combination with the Liron Patent does not teach or suggest the allocation of services to one of the complying node clusters. For at least these reasons, the rejection of independent claims 1, 9, 15 and 16 over the Anerousis Patent in view of the Liron Patent should fail.

July 21, 2005

Case No.: AUS920000805US1 (9000/14)

Serial No.: 09/738,371

Filed: December 15, 2000

Page 11 of 15

Additionally, though, because the Anerousis Patent does not teach the allocation of services to one of the complying node clusters, the Anerousis Patent also does not teach collecting a set of performance data representative of a set of physical characteristics of the network, identifying a plurality of node clusters in response to said collection of said set of performance data and correlating at least one property of each of the identified node clusters with at least one performance rule to determine a compliance of the node cluster to the performance rule as recited in claims 1 and 15. The Examiner erroneously cites to col. 8 lines 17-45 (reproduced below) to teach these limitations.

As shown in FIG. 3, an AS 300 includes both a system-specific SLR cluster 310 specific to the AS 300 and a plurality of site-specific SLR clusters 320 each specific to physical host sites 330 within the AS 300. The system-specific SLR cluster 310 receives network service requests from user terminals, e.g., user terminal 340, coupled to the AS 300 through some type of network 350, which may be the Internet. The system-specific SLR cluster 310 directs the network service request through routers 360 in the AS 300 to a site-specific SLR cluster 320. This site-specific SLR cluster 320 is specific to a physical host site 330 that provides the requested network service. The physical host site 330 includes at least one host server 370 that supports the requested network service.

The AS 300 also includes at least one other site-specific SLR cluster 325 specific to at least one other physical host site 335 that includes at least one host server 375 that also provides the requested network service. The host servers 370, 375 locally advertise the names of each of their virtual hosts to their respective site-specific SLR clusters 320, 325. The site-specific SLR clusters 320, 325 then advertise the union of virtual hosts and their addresses to the system-specific SLR cluster 310 that acts as a gateway router of the AS 300. The system-specific SLR cluster 310 advertises the union of virtual hosts and their addresses to entities outside the AS 300, e.g., user terminal 340. The system-specific SLR cluster 310 advertises the IP-addresses of the virtual hosts as its own.

July 21, 2005

Case No.: AUS920000805US1 (9000/14)

Serial No.: 09/738,371

Filed: December 15, 2000

Page 12 of 15

However, the referenced material merely teaches a system of system-specific SLR clusters for directing service requests to a particular physical host site that was received from user terminals (see col. 8 lines 17-31).

Regarding claims 4 and 5, the Anerousis patent alone or in combination with the Liron patent does not teach a method that is further defined wherein a map includes at least one server within a first cluster of said plurality of clusters for supporting the service on the network as recited in claim 4 or allocating the service to a first server of said at least one server as recited in claim 5.

Regarding claim 15, the Anerousis patent also fails to teach or suggest "means for collecting a set of performance data relating to a set of physical characteristics of a network; a means for identifying a plurality of node clusters in response to said set of performance data; a means for correlating at least one property of each of the identified node clusters with at least one performance rule to determine a compliance of the node cluster to the performance rule" as recited in claim 15. The Examiner cites to col. 8 lines 17-53 of the Anerousis patent (lines 45-53 reproduced below, lines 17-45 above) to teach or suggest these limitations.

50 Routers 360 within the AS 300 receive route advertisements from multiple site-specific SLR clusters 320, 325, appearing as if there were multiple paths to the same virtual host. For each virtual host, the routing protocol selects one of these routes, thereby selecting a site-specific SLR cluster 320 or 325 where it will direct traffic to that virtual host. This selection may be performed based on a load, cost, or proximity metric or some other arbitrary criteria.

This citation is misguided. Nowhere within this citation, or the entirety of the Anerousis patent, are these limitations suggested. The Liron patent also fails to teach or suggest these limitations, as correctly found by the Examiner. Therefore, the Anerousis patent alone or in combination with the Liron patent fails to teach or suggest all of the limitations of claim 15. For this additional reason, claim 15 is allowable over the cited art.

July 21, 2005
Case No.: AUS920000805US1 (9000/14)
Serial No.: 09/738,371
Filed: December 15, 2000
Page 13 of 15

Regarding claim 16, the Anerousis patent fails to teach or suggest a server including a memory and a processor for allocating a service on a network having a plurality of interconnected nodes that includes "an engine operable to utilize at least one performance rule for said plurality of node clusters as related to the service to identify a first node cluster of said plurality of node clusters for supporting the service for the plurality of interconnected nodes, wherein the engine is further operable to provide a map representative of each node cluster in compliance with at least one performance rule as related to the service and to allocate the service to one of the complying node clusters" as claimed and described in the Applicants' specification. The Examiner cites to col. 8 lines 45-53 of the Anerousis patent (reproduced above) to teach or suggest this limitation. This citation is misguided. Nowhere within this citation, or the entirety of the Anerousis patent, is it taught that an engine utilizes performance rules of a service to identify a node cluster and create a map of the node cluster to which to allocate that service as claimed by the Applicants. The Liron patent also fails to teach or suggest these limitations, as correctly found by the Examiner. Therefore, the Anerousis patent alone or in combination with the Liron patent fails to teach or suggest all of the limitations of claim 16. For this additional reason, claim 16 is allowable over the cited art.

Furthermore, claims 2 and 4-8 depend from independent claim 1 and include all of the elements and limitations of independent claim 1; claims 10-12 depend from independent claim 9 and include all of the elements and limitations of independent claim 9; and claims 17-19 depend from independent claim 16 and include all of the elements and limitations of independent claim 16. It is therefore respectfully submitted by the Applicants that claims 2, 4-8, 10-12, and 17-19 are allowable over the Anerousis Patent in view of the Liron Patent for at least the same reason as set forth above with respect to independent claims 1, 9, 15 and 16. For the above stated reasons, withdrawal of the rejection of claims 1, 2, 4-12 and 15-19 under 35 U.S.C. §103(a) as being unpatentable over the Anerousis Patent in view of the Liron Patent is therefore respectfully requested.

July 21, 2005

Case No.: AUS920000805US1 (9000/14)

Serial No.: 09/738,371

Filed: December 15, 2000

Page 14 of 15

- C. Claims 14 and 20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Anerousis in view of Liron and in further view of Johnson (U.S. Patent No. 6,078,946)

The Applicants have thoroughly considered Examiner Chea's remarks concerning the patentability of claims 14 and 20 over Anerousis in view of Liron and in further view of Johnson. The Applicants respectfully traverse this 35 U.S.C. §103(a) rejection. The Applicants have also thoroughly read the Johnson Patent.

As the Examiner is well aware, in order to make a *prima facie* case of obviousness under § 103(a), all of the *claimed* elements of the invention must be taught or suggested by the prior art (MPEP § 2143.03).

For at least the same reasons as stated above, the Applicants respectfully maintain that the Anerousis Patent does not teach or suggest all of the claimed elements of Applicants' invention. Additionally, Anerousis in combination with Liron and Johnson does not teach or suggest all of the claimed elements of Applicants' invention. Specifically, Johnson does not teach or suggest, at the least, identifying a plurality of node clusters as claimed by the Applicants in independent claims 9 and 16.

Claim 14 depends from independent claim 9 and claim 20 depends from independent claim 16, both claims including all of the limitations of their respective independent claim. Thus, claims 14 and 20 are allowable over the Anerousis Patent in view of the Liron patent and in further view of the Johnson Patent for at least the same reasons as stated above for claims 9 and 16.

Furthermore, as the Examiner is well aware, where an independent claim is non-obvious, any claim depending therefrom is also non-obvious. *See*, MPEP 2143. Applicants, therefore, request the withdrawal of the rejection of dependent claims 14 and 20 under § 103(a).

July 21, 2005

Case No.: AUS920000805US1 (9000/14)

Serial No.: 09/738,371

Filed: December 15, 2000

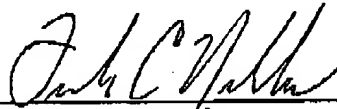
Page 15 of 15

SUMMARY

Examiner Chea's rejections of the pending claims have been obviated by the above amendment and remarks. The Applicants respectfully submit that claims 1, 2, 4-12 and 14-20 fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing amendments and remarks, favorable consideration and early passage to issue of the present application are respectfully requested.

Dated: July 21, 2005Respectfully submitted,
Franck Barillaud, *et al.*

CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, Illinois 60201
Phone: (847) 905-7111
Fax: (847) 905-7113



Frank C. Nicholas
Registration No. 33,983
Attorney for Applicants